MARYLAND DEPARTMENT OF THE ENVIRONMENT

FISCAL ANALYSIS PROJECT UPDATE

DECEMBER 2010

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MDE 2007 Fiscal Analysis Project: December 2010 Update

In 2007, the Maryland Department of the Environment completed an objective fiscal analysis of expenditures and revenues for ten years showing an internal structural deficit that, unless addressed, will require a reduction of FTEs beginning in fiscal year FY 2010. That analysis concluded that MDE had, in 2007, a one time gap of $25M and 370 FTEs to meet current mandates. That analysis also concluded that MDE's revenue would need to increase by $4M annually to maintain the current level of FTEs due to inflation and other fixed costs the agency does not control.

The December 2010 update concludes that, despite three new and two expanded fees,[1] MDE's fiscal prognosis is very similar to the 2007 report. The agency is still unable to keep pace with personnel costs and with new mandates such as oil and gas production permits and marine contractor licensing enacted in the 2010 legislative session. The December 2010 Update also concludes that the annual increase in revenue needed to maintain current levels of staffing is $3M annually.

Since the completion of the original analysis in 2007, three new special funds have been established within MDE, permit fees in the Air Pollution Control program have been increased, and the authorized uses of the Used Tire Cleanup and Recycling Fund and the Oil Disaster Containment, Cleanup and Contingency Fund have been broadened. In addition, the Sediment Control Fund and the Sewage Sludge Utilization Fund were consolidated within the Maryland Clean Water Fund.

MDE received 67 new positions through the Board of Public Works since 2008 to meet a portion of the increased workload associated with both the new and existing mandates. Despite these actions, ongoing statewide cost containment requirements including a PIN reduction, have impacted MDE's ability to meet statutory mandates and have further reduced the special fund balances that MDE has become increasingly dependent upon to meet basic program costs.

MDE reviews and updates the data from the 2007 Fiscal Analysis annually and continues to use this information to determine how existing resources within MDE can be reallocated to meet the highest priorities based on environmental and public health risks, and as a basis for decision-making related to cost containment requirements and revenue requirements. One outcome of this ongoing review process is the development of a Fee Review Schedule, based in part on the information in MDE's Guide to Environmental Permits. This schedule, included as an attachment to this report, establishes the basic structure for a systematic, comprehensive review of all of MDE's fees and related program costs.

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1 MDE has used the 2007 study to support legislation to increase permit fees in the Air Pollution Control Program, and to implement new fees in the Wetlands and Waterways Program, for the regulation of Coal Combustion By-products, and for Oil and Gas production. The 2007 study was also used to expand the authorized use of the Used Tire Cleanup and Recycling Fund and the Oil Disaster Containment, Cleanup and Contingency Fund.

The December 2010 Update revises the MDE 2007 Fiscal Analysis to reflect the current fiscal status of the agency.

Recommended actions have not changed as a result of the Update. Actions to address the internal structural deficit continue to include: identifying mechanisms to meet general fund program costs; diversifying revenue sources for general fund programs; ensuring dedicated fees are adequate to fund program costs; and expanding available uses of existing special funds.

Update

MDE programs continue to rely on a combination of general, special, federal, and reimbursable funds to support activities. MDE programs are increasingly dependent on non-general funds to support daily operations due to increasing federal and state mandates, increases in salary and fringe benefit costs despite furloughs and other statewide actions impacting salaries, and reductions in State general funds available for environmental programs. As a result, special and federal fund expenditures are increasing faster than annual revenues, which are insufficient for MDE to support all regulatory mandates and critical programs and activities.

Funding and Staffing:

- While the number of FTEs declined from 1,062 in FY 2002 (Figure 1) to 973 in FY 2007, from 2007 to 2010 the number of positions has increased. Regulatory mandates, such as number of regulated sites, complexity of permit application reviews, and public controversies regarding regulatory decisions continue to grow. Legislation enacted in the 2010 Session includes new requirements and staff for oil and gas permitting and for marine contractor licensing, although no new positions have been provided for these programs. The staffing deficit identified in the 2007 report continues. The current position demand is estimated to be 342 positions.

- Salary expenses (wages and fringe benefit costs) per FTE are increasing at an average of 3.9% per year (Figure 2), despite savings from mandatory statewide furlough days initiated in fiscal 2009. These increases are largely due to salary adjustments for certain classifications and employee fringe benefit costs.

- Based on the current trend of increasing cost/FTE, MDE's salary budget would need to increase by $3.2 million per year to maintain the current level of staffing (Figure 3).

- If MDE operating revenue does not increase to cover the increasing personnel costs, and if salary costs are not offset by reductions in operating costs, staffing levels are projected to decline from 1015.5 FTEs in FY 2011 (970 permanent and 45.5 contractual positions) to 849 FTEs by FY 2015, an average reduction of 42 FTEs per year (Figure 4). This is equivalent to one major MDE program function being eliminated annually, beginning in FY 2012.

Figure 1.

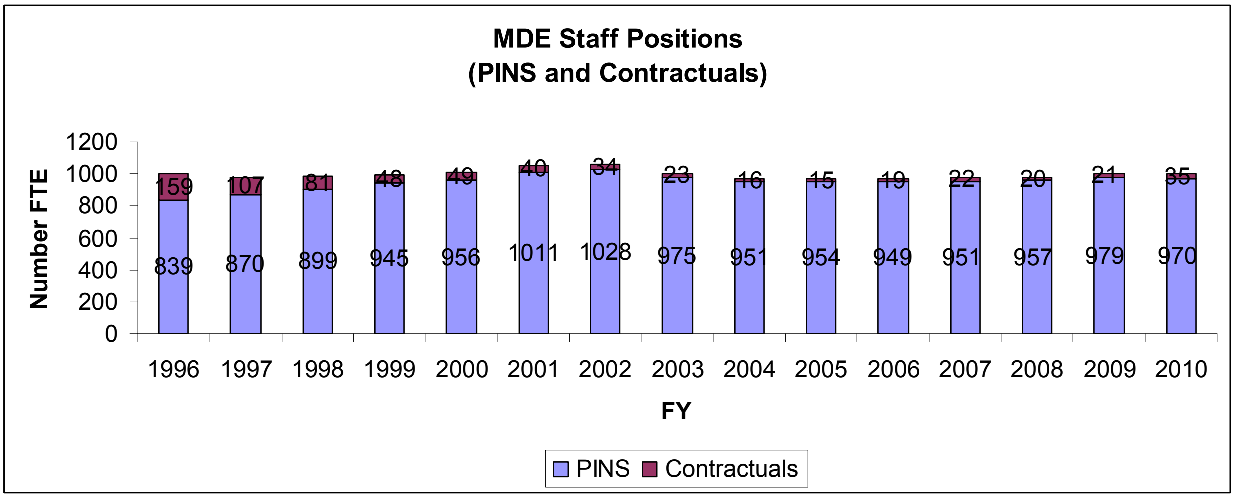


Figure 2.

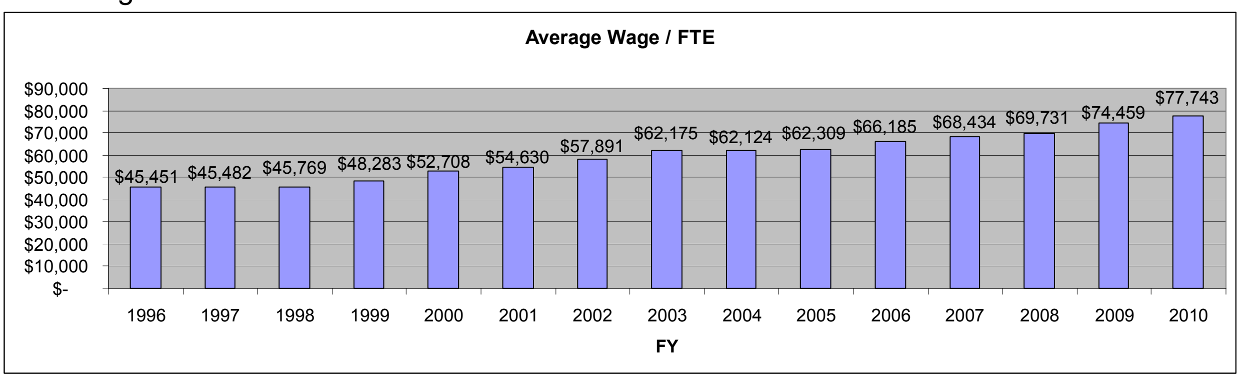


Figure 3.

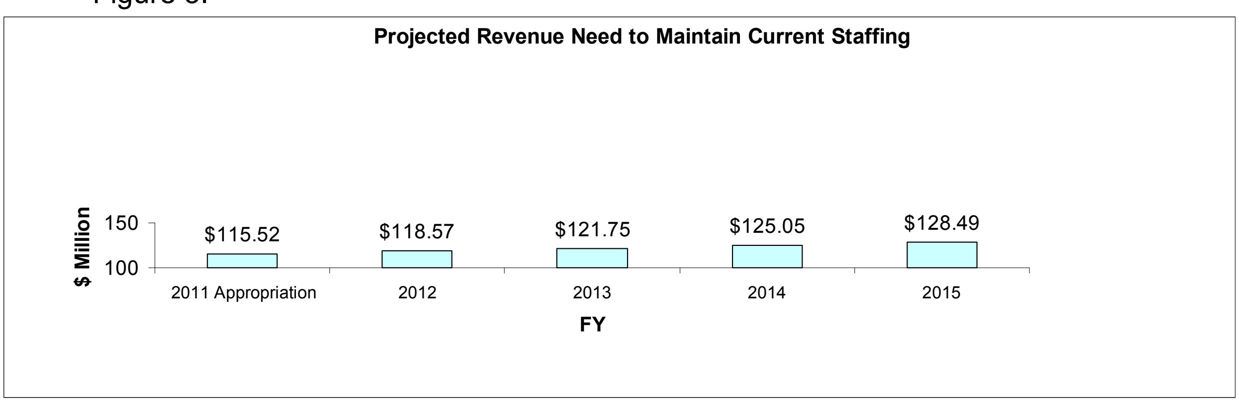
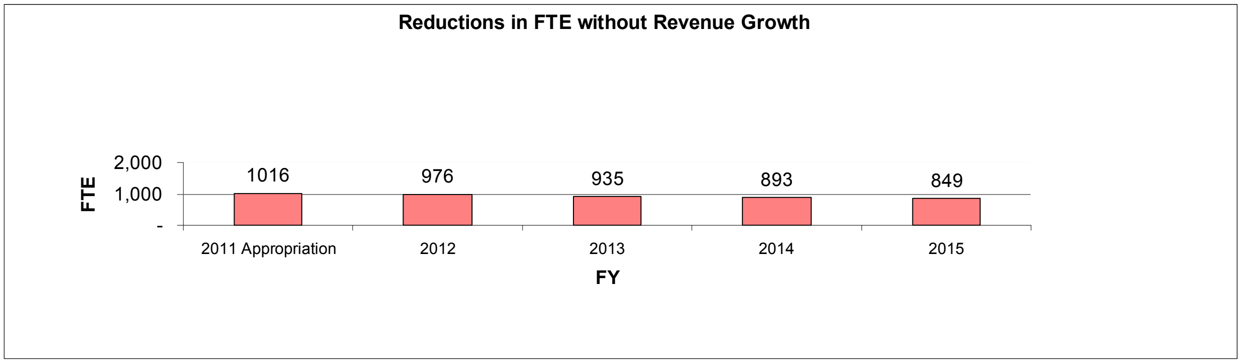


Figure 4.



It is also important to note that (1) certain federal grants require that a baseline level of effort be maintained, and if MDE falls below that level, the agency risks the loss of federal funds; (2) the current staffing level is still not adequate to meet water quality goals as illustrated by the number of impaired waters in Maryland; and (3) federal and state mandates continue to increase, often without adequate staffing or funding to support these new requirements. Examples include the increase in programming needed to implement the pollution reduction programs to meet the Chesapeake Bay TMDL – a pollution diet and the Climate Change Plan to reduce greenhouse gas emissions.

Sources of Funds

- MDE's operating budget relies on a combination of General, Federal, and Special funds, with modest support from Reimbursable funds. The FY 2011 appropriation includes $68.8 million in special fund appropriation (Figure 5), a significant increase over prior years. The increase is largely related to funds appropriated for debt service on the Bay Restoration Fund bonds and is not available for MDE's operating costs.

- MDE has limited control over fixed costs such as salaries and fringe benefits, rent, utilities, fuel, and debt service

- General funds have declined, from a peak of $45 million in FY 2002 to $35.5 million in FY 2010. The gap has been offset primarily by increased Special fund expenditures (Figure 6). The federal fund increase in FY 2010 is largely related to the ARRA program and is not a revenue source for MDE programs.

Figure 5.

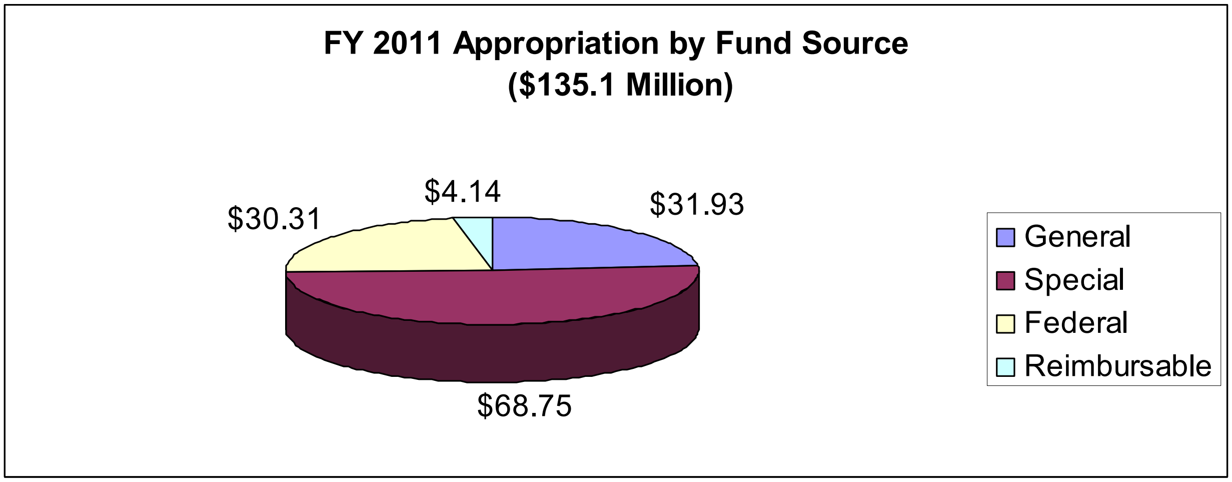
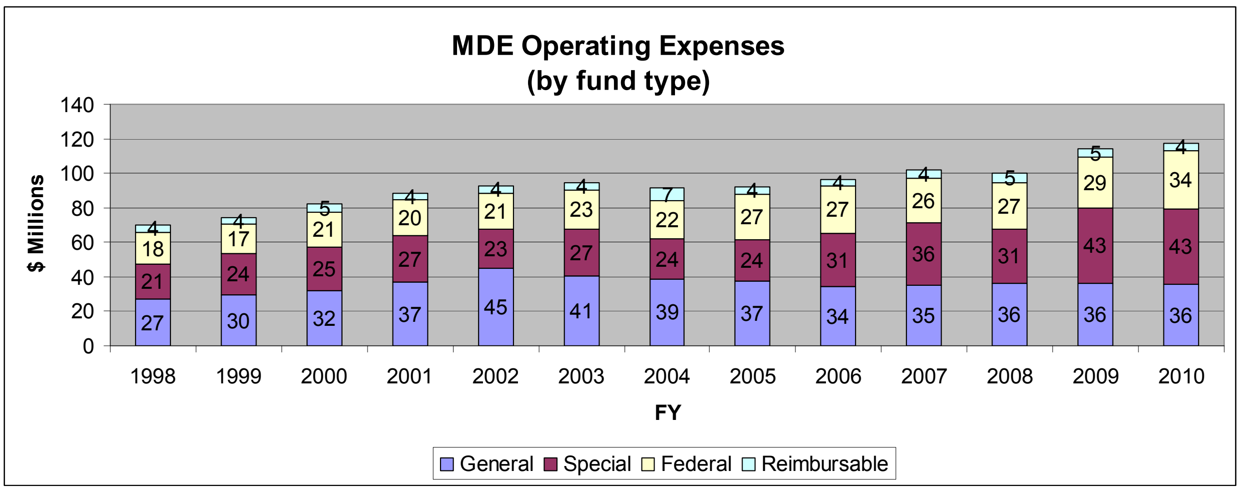


Figure 6.



Although MDE actively applies for additional federal funds through competitive grants, federal grants fulfill only a portion of the total needs, and typically require some level of matching funds.

Special fund revenues contribute significantly to the Department's ability to address specific environmental and public health issues. However, the Department's inability to adjust fees without statutory changes to address workload increases and inflation continues to hamper its efforts to meet its mandates. In addition, because most fees have not been updated to keep up with the true cost of the activity, the number of special funds showing annual deficits is increasing. As part of the ongoing fiscal analysis process, MDE has reviewed all fees and special funds and has developed a Fee Review Schedule to provide the framework for a systematic and comprehensive review of fees and the related programmatic costs.

Conclusions

Despite recent legislative changes to generate new sources of non-general fund revenue, MDE's revenues do not keep pace with existing and new requirements and are currently inadequate to fulfill the Department's mandates despite significant productivity gains documented through the MDEStat process. Adding to the gap between revenues and programmatic needs are the cost associated with increasing federal and state mandates and the complexity of regulatory issues. Caps and inflexible limits on spending of special funds, the inability to adjust fees for increasing actual costs and, to a lesser degree than in the past, the inability to fill positions or receive new positions even when special funds are available exacerbate the challenge.

Through Phase II of the study, MDE continues to review core functions and has reallocated positions to higher risk programmatic areas such as oil and gas permits and animal farming operations.

The following recommendations are made:

1. Identify mechanisms to provide for MDE's general fund program costs.
2. Diversify fund sources for programs which are largely dependent on general funds.
3. Ensure that fees and other revenues are adequate to fully fund mission-critical programs. Where applicable, legislative or regulatory changes should be made to allow periodic adjustment of special fees to account for inflation and workload adjustments, so that revenues support the actual cost of the activity. The Department must adhere to a routine fee review schedule.
4. To enable the Department to address the highest environmental and public health priorities, single-purpose special funds should be combined where possible with a concurrent expansion in the eligible use of these funds, similar to the consolidation of the Sewage Sludge Fund and the Sediment Control Fund into the Maryland Clean Water Fund approved during the 2010 legislative session. This revenue-neutral approach creates efficiencies, but is not a complete solution needed to address programmatic revenue shortfalls.
5. Authorized uses of existing special fund sources could be expanded to include related activities similar to the expanded use of the Oil Disaster Containment, Cleanup and Contingency Fund approved during the 2010 legislative session.